

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ARMANDO GARCIA - GARCIA,

Petitioner

- VS -

UNITED STATES OF AMERICA

Respondent

PETITIONER'S EXHIBIT

A

[IN RE: 28 U.S.C. §2255]

DUE TO PETITIONER GARCIA-GARCIA'S LACK OF NUMEROUS DOCUMENTS PERTINENT THE UNDERLYING CASE, THIS EXHIBIT COULD NOT BE RETRIEVED IN SUFFICIENT TIME TO BE MADE A PART OF THE RECORD IN THIS INSTANT §2255 PROCEEDING.

AS THIS EXHIBIT IS UTILIZED BY CO-DEFENDANTS OF PETITIONER GARCIA-GARCIA, PETITIONER MOVES TO ADOPT REFERENCE TO SAME.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ARMANDO GARCIA - GARCIA,

Petitioner

- VS -

UNITED STATES OF AMERICA

Respondent

PETITIONER'S EXHIBIT

B

[IN RE: 28 U.S.C. §2255]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 00-1361

UNITED STATES,
Appellee,

v.

MIGUEL VEGA-COLON,
Defendant-Appellant.

No. 00-1456

UNITED STATES,
Appellee,

v.

MIGUEL VEGA-COSME A/K/A MIGUEL BOBOLON,
Defendant-Appellant.

No. 00-1488

UNITED STATES,
Appellee,

v.

ARMANDO GARCIA-GARCIA A/K/A MANDY,
Defendant-Appellant.

No. 00-1548

UNITED STATES,
Appellee.

v.

JUAN ENRIQUE CINTRON-CARABALLO,
Defendant-Appellant.

No. 01-1674

UNITED STATES,
Appellee,

JUAN SOTO-RAMIREZ A/K/A PIPU,
Defendant-Appellant.

BEFORE

COFFIN, Senior Circuit Judge
SELYA, LYNCH, Circuit Judges

ORDER OF COURT

Entered: December 10, 2004

Defendants' pro se motion to recall mandate is denied.

By the Court:

Richard Cushing Donovan, Clerk

By: JULIE GREGG
Operation Manager

[cc: Messrs. Anglada-Lopez, Miller, Perez-Sosa, Vega-Pacheco,
Rodriguez-Coss, Vega-Cosme, Vega-Colon, Soto-Ramirez, Garcia-
Garcia, Cintron-Caraballo and Ms's Ramos Grateroles, Morales, Brill
Shein and Velez-Rive]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ARMANDO GARCIA - GARCIA,

Petitioner

- VS -

UNITED STATES OF AMERICA

Respondent

PETITIONER'S EXHIBIT

C

[IN RE: 28 U.S.C. §2255]

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

William K. Suter
Clerk of the Court
(202) 479-3011

February 28, 2005

Mr. Armando Garcia-Garcia
Prisoner ID 14932-069
P.O. Box 1033
Coleman, FL 33521-1033

Re: Miguel A. Vega-Cosme, Miguel Vega-Colon, Armando Garcia-
Garcia, and Juan Soto-Ramirez
v. United States
No. 04-8347

Dear Mr. Garcia-Garcia:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

A handwritten signature in dark ink, appearing to read "William K. Suter", written in a cursive style.

William K. Suter, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ARMANDO GARCIA - GARCIA,

Petitioner

- VS -

UNITED STATES OF AMERICA

Respondent

PETITIONER'S EXHIBIT

D

[IN RE: 28 U.S.C. §2255]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Codefendants:

William Soto-Enríquez,
Aka "William Descamisado"
Docket No. 97-00076-01

Juan Soto Ramirez,
Aka "Pipo"
Docket No. 97-00076-02

Eduardo Alicea-Torres,
Aka "Eggy"
Docket No. 97-00076-03

Ramón L. Fernández-Malavé,
Aka "Porcel"
Docket No. 97-00076-04

Carmelo Vega-Pacheco,
Aka "Popeye"
Docket No. 97-00076-05

Euclides Carbonell-Torres,
Aka "Clibi"
Docket No. 97-00076-06

Edwin Flores Encarnación,
Aka "Yambe"
Docket No. 97-00076-07

Luis Torres-Alicea,
aka "Pito Salsa"
Docket No. 97-00076-09

René González-Ayala,
Docket No. 97-00076-10

John Doe,
Aka "Yun"
Docket No. 97-00076-11

José Luis De León-Maysonet
Docket No. 97-00076-12

Wayne Ealois Huggins
Docket No. 97-00076-14

Miguel A. Rivera-Santos,
Aka "Guel"
Docket No. 97-00076-15

Miguel Vega-Coame,
Aka "Miguel Bobolón"
Docket No. 97-00076-18

UNITED STATES OF AMERICA

v.

Docket No. 97-00076(DRD)
Defendant No. 008

ARMANDO GARCIA-GARCIA
aka "Mandy"

PRESENTENCE REPORT

Separated for: Hon. Daniel R. Domínguez Sentencing Date:
U.S. District Judge 10-01-99

Prepared by: Miriam Figueroa Office Location:
U.S. Probation Officer Hato Rey, P.R.
(787) 766-5596, 5867

Offense: **Count Two:** 21 U.S.C. §846 - Conspiracy to distribute
in excess of five (5) kilograms of heroin, in excess
of five (5) kilograms of cocaine, in excess of five
(5) kilograms of cocaine base and in excess of one
hundred (100) kilograms of marijuana, a Class "A"
felony.

Date of Arrest: April 11, 1997

Custodial Status: In federal custody since date of arrest.

Identifying Data:

Date of Birth: 03-12-72 Age: 27 Sex: Male

Race: White/Hispanic Citizenship: U.S. Native

WRI No.: 672 172 MA1 U.S. Marshal No.: 14932-069

IN: 581-45-8358 Other ID No: None

Education: Eleventh Grade Dependents: Four

Legal Address: Israel Ward, 63 Cuba Street, (Alley #4)
Hato Rey, Puerto Rico

Detainers: None known

Miguel Vega,
Aka "Mickey"
Docket No. 97-00076-19

Juan E. Cintrón-Caraballo
Docket No. 97-00076-20

Alberto Santiago-Figueroa,
Aka "Albert"
Docket No. 97-00076-21

Juan Antonio Rodríguez-López,
Aka "Tony, El Bebo"
Docket No. 97-00076-22

Assistant U.S. Attorney

Jacabed Rodríguez-Coss, Esq.
Federal Office Bldg., Rm. 452
150 Carlos Chardón Ave.
Hato Rey, Puerto Rico

(787) 766-5656

Date report prepared:

Revised:

Defense Counsel (Appointed)

José Romo-Matlenzo, Esq.
54 Coll and Toste Street
286 Baldrich
Hato Rey, Puerto Rico 00918

(787) 753-7600

September 3, 1999

Mandatory Minimum: Ten (10) years

PART A. THE OFFENSE

Charge(s) and Conviction(s)

1. The defendants were the subject of a two count Superseding Indictment rendered by a District of Puerto Rico Grand Jury on December 14, 1998. **Count One** charges that from on or about January 1, 1990, and continuing until on or about March 7, 1994, in the District of Puerto Rico and elsewhere, William Soto-Enríquez, aka "William Descamisac", and Juan Soto-Ramírez, aka "Pipo", aiding and abetting each other, did engage in a continuing criminal enterprise, as this term is defined in 21 U.S.C. § 848(c), in that William Soto-Enríquez and Juan Soto-Ramírez did violate the provisions of 21 U.S.C., subchapter I as alleged in Count Two of the indictment, which violations were part of a continuing series of violations of subchapter I, undertaken by William Soto-Enríquez and Juan Soto-Ramírez; in concert with at least five other persons with respect to whom the defendant, William Soto-Enríquez, occupied a position as the principal administrator, organizer and leader of the enterprise, and with respect to whom defendant, Juan Soto-Ramírez, occupied a position as administrator, organizer, supervisor, and manager, and from which continuing series of violations, the defendants herein obtained substantial income and resources. All in violation of 21 U.S.C. §§ 848(a) and (b), and 18 U.S.C. § 2. **Count Two** charges that from on or about January 1, 1990, and continuing until on or about March 7, 1994, in the District of Puerto Rico and elsewhere, William Soto-Enríquez, aka "William

Descamisaó"; Juan Soto-Ramírez, aka "Pipo"; Eduardo Alicea-Torres, aka "Eggy"; Ramón L. Fernández-Malavé, aka "Porcel"; Carmelo Vega-Pacheco, aka "Popeye"; Euclides Carbonell-Torres, aka "Clibi"; Edwin Flores-Encarnación, aka "Lambe"; Armando García-García, aka "Mandy"; Luis Torrens-Alicea, aka "Pito Salsa"; René González-Ayala; John Doe, aka "Yun"; José Luis De León-Maysonet; Wayne Ealois-Higgins; Miguel A. Rivera-Santos, aka "Guel"; Miguel Vega-Cosme, aka "Miguel Bobolón"; Miguel Vega, aka "Mikey"; Juan E. CINTRÓN-Caraballo; Alberto Santiago-Figueroa, aka "Albert"; and Juan Antonio Rodríguez-López, aka "Tony, El Bebo"; did conspire and agree with each other, and with divers other persons to the grand jury known and unknown, to commit an offense against the United States, to wit, to distribute multi-kilogram quantities of controlled substances, that is to say, in excess of five (5) kilograms of heroin, in excess of five (5) kilograms of cocaine, in excess of five (5) kilograms of cocaine base, and in excess of one hundred (100) kilograms of marijuana, as prohibited by 21 U.S.C. § 841(a)(1). All in violation of 21 U.S.C. § 846.

2. On June 25, 1999, the defendant was found guilty by jury trial as to Count Two of the indictment.

On November 30, 1998, Edwin Flores-Encarnación pled guilty to Count Two and was sentenced to 121 months of imprisonment. On November 20, 1998, co-defendant Luis Torrens-Alicea pled guilty to Count Two of the indictment and is scheduled for sentencing on October 7, 1999. On August 3, 1999, co-defendant

Alberto Santiago-Figueroa pled guilty as to Count Two and is scheduled for sentence on October 21, 1999. Co-defendants, Euclides Carbonell-Torres, Wayne Ealois Higgins, Miguel A. Rivera-Santos, and Juan A. Rodríguez-López, are pending trial. All other co-defendants were found guilty by jury trial on June 25, 1999, and are pending to be sentenced.

Related Cases

4. None.

The Offense Conduct

5. According to all available official information, the main object of the instant conspiracy was to distribute heroin, cocaine, cocaine base (crack cocaine), and marijuana, at different drug points for significant financial gain or profit. It was part of the conspiracy that the defendants and their co-conspirators would purchase multi-kilogram quantities of heroin, cocaine, and marijuana at wholesale prices. They would cut and divide multi-kilogram quantities of heroin, cocaine, and marijuana in small packages for subsequent sale at the drug points. It was further part of the conspiracy that the defendants would cook part of the purchased cocaine and create cocaine base (crack cocaine), which was also packaged in small packages for subsequent sale at drug points. It was further part of the conspiracy that they would use residences and other locations in order to store and package the controlled substances. It was further part of the conspiracy that the defendant would sell packaged quantities

- of heroin, cocaine, cocaine base (crack cocaine), and marihuana in small quantities to customers at drug points.
6. The members of the organization had the following different roles and perform different tasks in furtherance of the conspiracy:
7. William Soto-Enriquez, aka "William Descamisao", was the principal leader and organizer of the drug-trafficking organization. He did lead, organize, control, enforce through the use of violence, and supervise the sales of controlled substances at drug points located at the "Barriada Bitumul", Sector Israel, Hato Rey, Puerto Rico. He did direct and supervise numerous subordinates, whose principal tasks were: (a) to supply sellers with the drug to be sold and collect the proceeds derived from their sale at drug points; (b) to package drugs for subsequent sale at drug points; (c) to provide protection to both himself and the illegal narcotics being sold at the drug points; and (d) to sell narcotics at drug points. He also participated in the packaging of the narcotics for distribution at drug points, personally delivered packaged narcotics to his runners and sellers, and, at times, collected proceeds derived from drug sales.
8. Juan Antonio Rodríguez-López, aka "Tony El Bebo", was one of the leaders and organizers of this conspiracy. He did lead, organize and control, enforce through the use of violence, and supervise the sales of controlled substances at drug points located at the "Barriada Bitumul", Sector Israel, Hato Rey, Puerto Rico.
9. Juan Soto Ramírez, aka "Pipo", was one of the leaders and supervisors of the drug-trafficking organization. He did lead, enforce through the use of violence, and supervise the sales of controlled substances at drug points located at the "Barriada Bitumul", Sector Israel, Hato Rey, Puerto Rico. He did direct and supervise numerous subordinates whose principal tasks were: (a) to supply sellers with the drugs to be sold and collect the proceeds derived from their sale at drug points; (b) to package drugs for subsequent sale at drug points; (c) to provide protection to both himself and the illegal narcotics being sold at drug points; and (d) to sell narcotics at drug points. He would also participate in the packaging of the narcotics for distribution at drug points, personally deliver packaged narcotics to his runners and sellers, and, at times, collect proceeds derived from drug sales.
10. Mr. Soto-Enriquez would employ runners for the drug-trafficking organization. These runners would receive packaged narcotics from Mr. Soto-Enriquez and deliver them to the sellers for sale at the drug points and would collect the proceeds derived from sales already completed by the sellers. Runners would be responsible for the status of the inventory of illegal narcotics sold at the drug points and for supervising the operations at a given drug point. He also had

triggersmen who were part of the drug-trafficking organization. These men would possess, carry, use and brandish firearms using them to provide protection to the leader of the organization as well as to the drug operations of the conspiracy from rival-drug trafficking organizations. Among those identified as triggersmen were: co-defendants Edwin Flores-Encarnación, aka "Lambe"; Eduardo Alicea-Torres, aka "Eggy"; Ramón Fernández-Malavé, aka "Porcel"; Carmelo Vega-Pacheco; **Armando García-García, aka "Mandy"**; René González-Ayala; Juan Cintrón-Caraballo; Wayne Ealois-Huggins; José Luis De León-Maysonet, aka "Luis Tota"; Luis Torrens-Alicea, aka "Pito Salsa"; and an unindicted co-conspirator, Víctor Negron-Maldonado, aka "Pitosito". Finally, drug sellers were also part of the drug-trafficking organization. The drug sellers would sell heroin, cocaine, cocaine base (crack cocaine) and marijuana at the "Barrida Bitumal" drug points. Co-defendants Miguel A. Rivera-Santos, aka "Guel"; **Armando García-García, aka "Mandy"**, José Luis De León-Maysonet, aka "Luis Tota"; Ramón Fernández-Malavé, aka "Porcel", Carmelo Vega-Pacheco, aka "Popeye", and defendant Edwin Flores-Encarnación, aka "Lambe", were some of the drug sellers of the drug trafficking organization.

11. Co-defendants Euclides Carbonell-Torres, aka "Clibi"; Miguel Vega, aka "Mickey"; **Armando García-García, aka "Mandy"**; René González-Ayala; José Luis De León-Maysonet, aka "Luis Tota";

Wayne Ealois-Huggins and Edwin Flores-Encarnación, aka "Lambe", would package narcotics in small containers for sale at the drug points.

12. Co-defendants Juan Cintrón-Caraballo; Alberto Santiago-Figueroa, aka "Albert", and Miguel Vega-Cosme, aka "Miguel Bobolón", ran drug points within the "Barrida Bitumal" in Hato Rey, Puerto Rico.

13. According to the government, the defendant **Armando García-García**, was involved in the murder of César Oscar Nazario.

14. On April 11, 1997, the defendant, Armando García-García was arrested and ordered preventively detained. On April 15, 1997, he was ordered detained without bail by the Hon. Justo Arenas, U.S. Magistrate Judge.

Adjustment for Obstruction of Justice

15. There is no information that the defendant impeded or obstructed justice.

Adjustment for Acceptance of Responsibility

16. An interview was sustained with the defendant at the Metropolitan Detention Center in Guaynabo, Puerto Rico. He indicated that he is innocent and did not participate in the offense conduct since he was incarcerated for local charges from 1991 to 1992. The defendant further informed that in 1993, he went to live to Arecibo, Puerto Rico and did not engage in any drug trafficking. As such, he informs that this case is related to his local case in San Juan, Puerto Rico.

Offense Level Computation

17. The guideline for a 21 U.S.C. § 846 offense is found in Section 2D1.1 of the guidelines. However, based on the nature of the instant case, wherein a victim was killed under circumstances that would constitute murder under Title 18 U.S.C. § 1111, the cross reference in USSG §2D1.1(d)(1) requires the application of USSG Section 2A1.1. Therefore, the base offense level is 43.
18. Specific Offense Characteristics: None +0
19. Adjustment for Role in the Offense: None. 0
20. Victim Related Adjustment: None. 0
21. Adjustment for Obstruction of Justice: None. 0
22. Adjustment for Acceptance of Responsibility: The defendant has not accepted responsibility for his involvement in the instant offense. As such, no reduction is authorized.
- Guideline § 3E1.1. 0
23. TOTAL OFFENSE LEVEL: 43 43

PART B. THE DEFENDANT'S CRIMINAL HISTORYJuvenile Adjudications

24. None known.

Criminal Convictions

<u>Date of Arrest</u>	<u>Conviction/Court</u>	<u>Date Sentence Imposed/Disposition</u>	<u>Guideline/Points</u>
25. 10-22-90 Age: 18	Violation Art. 256 reduced to Art. 95 (a misdemeanor). San Juan Superior Court, Puerto Rico. Cr. No. KAP90G0046.	12-28-90: Pled guilty to reduced charge. 05-10-91: Sentenced to an imprisonment term of six (6) months. 08-04-91: Released from custody without parole.	4A1.1(b)
26. 09-05-91 Age: 19	Violation Art. 401, Controlled Substance Law, reduced to Art. 406 (Attempted Possession with intent to distribute) San Juan, Superior Court, Puerto Rico. Cr. No. KSC91G0668.	09-25-92: Pled guilty and sentenced to an imprisonment term of one (1) year. 04-21-93: Released from custody without parole.	4A1.1(b)

The charge reads that on October 22, 1990, the defendant used violence against Jaime R. Velázquez, No. 8957, by hitting him, thus, preventing that this public official perform his duties, in arresting a minor.

The charge reads that on September 4, 1991, the defendant possessed with intent to distribute heroin without having the legal authority to do so.

27. 08-13-93	Violation	12-06-93: Pled	4A1.1(a)
Age: 21	Art. 401,	guilty.	
	Controlled	04-14-94:	
	Substance	Sentenced in	
	Law, reduced	absentia to an	
	to Art. 404	imprisonment term	
	(Two Counts)	of two (2) years	
	Arecibo	as to each count,	
	Superior	to run	
	Court,	concurrently with	
	Puerto Rico.	each other.	
	Cr. No.	04-25-96:	
	CSC93G2449	Transferred to a	
	and 50.	local halfway	
		house.	
		04-11-97:	
		Expiration date	
		and arrested for	3
		instant offense.	

The charges read that on August 13, 1993, the defendant possessed with intent to distribute cocaine and marijuana, without having the legal authority to do so.

28. The subtotal of criminal history points is 7. Since the defendant committed the instant offense while under a criminal justice sentence, two (2) points are added pursuant to USSG §4A1.1(d). As the defendant committed the instant offense less than two years after release from imprisonment on the sentence of September 25, 1992, one (1) point is added pursuant to USSG §4A1.1(e).

Criminal History Computation

29. The total of the criminal history points is 10. According to the Chapter Five Sentencing Table, 10 to 12 criminal history points establishes a criminal history category of V.

Other Criminal Conduct

30. On September 25, 1992, the defendant was sentenced to a fine of \$25.00 or one day in jail for every \$5.00 not paid, relative to four traffic law violations, to run consecutively to each other. Pursuant to USSG § 4A1.2(c) (2), these type of offenses are never counted.

PART C. SENTENCING OPTIONS

Custody

31. Statutory Provisions: The statutory maximum term of imprisonment is life. The minimum term is ten (10) years. 21 U.S.C. § 841(b) (1) (A).

32. Guideline Provisions: Based upon a total offense level of 43 and a criminal history category of V, the applicable guideline term in this particular case is life imprisonment. As the applicable guideline range falls within the purviews of Zone D of the Chapter Five Sentencing Table, guideline provisions require that the minimum term be satisfied by a sentence of imprisonment. Guideline § 5C1.1(f).

Supervised Release

33. Statutory Provisions: The Court must impose a term of supervised release of at least five (5) years. 21 U.S.C. § 841(b) (1) (A).

34. Guideline Provisions: The Court shall order a term of supervised release to follow imprisonment when a sentence of imprisonment of more than one year is imposed or when required by statute. The term of supervised release imposed shall in no event be less than any statutorily required term. Guideline §§ 5D1.1(a) and 5D1.2(b). The Court shall impose a supervised released term of at least five (5) years. 21 U.S.C. § 841(b)(1)(A).

Probation

35. Statutory Provisions: The defendant is not eligible for probation as the offenses of conviction expressly preclude probation as a sentencing alternative. 18 U.S.C. §§ 3561(a)(2).

PART D. OFFENDER CHARACTERISTICS

Family Ties, Family Responsibilities, and Community Ties

36. The defendant was born on March 12, 1972, in Arecibo, Puerto Rico to the union of Luis García, age 45, a medical chemist and Mercedes García, age 42, a bakery shop employee. Although the defendant is an only child, he informed having two maternal siblings who were identified as Miguel Angel and Caroline Mercedes, ages 17 and 7, respectively. The defendant also has three paternal siblings, Glenda, age 23; Luis Daniel, age 20; and Johana García, age 18. All siblings reside in Puerto Rico. The defendant advised having been reared in San Juan, Puerto Rico by his mother since his parents separated when he was one year old. He informed that he hardly had any

communication with his father and he never provided child support. As such, his mother raised him through hard work. Defendant indicated that he resented his father's attitude, however, at present he maintains a better relationship with him. Defendant indicated that he had several step-fathers who were not abusive toward him, but his mother had no luck in maintaining a stable relationship. When he was young this situation affected him emotionally, and he began to portray behavioral problems at school. Nevertheless, the defendant informed that he maintained a good relationship with his mother and siblings, which still prevails. An interview was sustained with defendant's mother who described her son as a good person who always looked after his family's well being. She indicated that while living with her he never portrayed any behavioral problems since she was very strict and encouraged him to work, but once he left her home, he changed.

37. The defendant informed having sustained a consensual relationship with Wanda E. Ortiz from 1989 to 1998, wherein three children were procreated, they are: Armando, age 4; Brian, age 3; and Josua Armando, age 2. The defendant informed that he also raised his step-daughter, Carla Mariel Ortiz, age 10, since she was a few months old. The defendant also has a five (5) year old daughter, Gretha Mercedes García, product of an extra-marital affair he sustained with Haydée

Acevedo. Attempts were made to contact Ms. Ortiz, however, same was unfeasible

Mental and Emotional

38. According to the defendant, when he was in the 8th grade, he was referred to a psychologist by the school because of behavioral problems. After approximately four (4) months of treatment, he was discharged. He could not recall the name of the psychologist for verification.

Physical Condition, Including Drug Dependence and Alcohol

Abuse

39. The defendant stands 5'10" tall, weighs approximately 215 pounds, has brown eyes and black hair. According to the defendant he has a tattoo in his back with his mother's name and has scars on his left arm, right shoulder and abdomen, product of six gun shot wounds. As a result, a lung, spleen and three fourths (3/4) of his liver were removed. The defendant was hospitalized at the Arecibo Regional Hospital for a period of four months and he described his recovery as fair. The defendant further informed that he has been suffering from asthma since childhood. Prescribed medication is taken when necessary. Relative to drug use, the defendant indicated that he began to consume marijuana at the age of 17, five days a week. He also informed having used cocaine on a social basis for approximately four years, last time being prior to his federal arrest. The defendant advised that while

in was at the local halfway house, he was referred to DESCA, a government drug treatment program, but he discontinued same due to his arrest for the instant offense. Excessive alcohol consumption was denied.

Education and Vocational Skills

40. The defendant completed the eleventh grade at the Miguel Such Vocational School located in Río Piedras, Puerto Rico. He indicated that while serving time at MDC, Guaynabo, he has engaged in the Parenting and Drug Program, and took a card making course. Additionally, he was recognized by the institution for having participated in the renovation of Unit 2B.

Employment Record

41. The defendant has been in federal custody since April 11, 1997. Prior to his arrest, that is from June to December 1996, the defendant indicated having worked as an assistant for Central Insulation, located in Barceloneta, Puerto Rico, earning minimum wage.

42. The defendant further advised that from 1994 to 1996, he worked at José Luis Auto Body Shop, in Hatillo, Puerto Rico, earning \$600 a month. Same was discontinued for a better employment opportunity.

PART E. FINES AND RESTITUTIONS

43. Statutory Provisions: The maximum fine is \$4,000,000. 21 U.S.C. § 841(b) (1) (A).

44. A special monetary assessment in the sum of \$100 is mandatory as to Count Two. 18 U.S.C. § 3013.
45. Guideline Provisions: The fine range for this offense is from a minimum of \$25,000 to a maximum of \$4,000,000. Guideline SS5E1.2(c)(3), Fine Table and 5E1.2(c)(4).
46. Subject to the defendant's ability to pay, the Court shall impose an additional fine amount that is at least sufficient to pay the costs to the government of any imprisonment, probation, or supervised release, pursuant to Section 5E1.2(1). The most recent advisory from the Administrative Office of the United States Courts, dated April 12, 1999, suggests that a monthly cost of \$1,826.99 be used for imprisonment, \$1,326.78 for offenders in community corrections centers, and \$253.29 for supervision.
- Defendant's Ability to Pay
47. Based upon the financial statement submitted by the defendant, he has been serving in custody since April 11, 1997. As such, he has not been generating any monthly income. Nevertheless, as assets the defendant informed having a plot of land in the Dominican Republic valued at approximately \$9,000. As liabilities, he indicated having an outstanding balance of \$225 with "Mueblerias Mendoza" (a furniture store).
48. Based upon the defendant's financial profile, it appears that he does have the ability to pay a fine. If the Court after review of the financial disclosure makes a finding that the

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imposition of a fine within the required range is not viable, the Court may impose a lesser fine or waive the imposition of the same. USSG § 5E1.2(f).

PART F. FACTORS THAT MAY WARRANT A DEPARTURE

49. The probation officer has not identified any information that would warrant a departure from the guidelines.

Respectfully submitted,

CARLOS D. RODRIGUEZ, CHIEF
U.S. PROBATION OFFICER

William Figueroa
U.S. Probation Officer

MF/isd

Approved:

Eva M. Maldonado-Renta
Eva M. Maldonado-Renta
Assistant Deputy Chief
U. S. Probation Officer

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ARMANDO GARCIA - GARCIA,

Petitioner

- VS -

UNITED STATES OF AMERICA

Respondent

PETITIONER'S EXHIBIT

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[IN RE: 28 U.S.C. §2255]

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,
Plaintiff,
vs.
WILLIAM SOTO BENIQUEZ, ET AL.,
Defendants.

*Conrad Corrada will
be away with
CR. NO: 97-076 (DRD)
P. 21 - Marine Sub
P. 22 - Military protocol*

TRIAL

BE IT REMEMBERED that the above entitled action came on
for hearing before the HONORABLE DANIEL R. DOMINGUEZ, sitting at
Hato Rey, Puerto Rico, on the 24th day of March, 1999.

All parties and their counsel present as before.

*<William Soto
multiple company>*

ARTHUR G. PINEDA, OCR
Federal Building, Rm. G-40
150 Chardon Avenue
Hato Rey, Puerto Rico 00918
(787) 766-4319

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Court is can that be introduced into evidence to prove a
potential overt act.

MR. MIRANDA CORRADA: Your Honor, with all due respect,
I have another concern and I'm certainly going to read these
cases that have been cited by my sister from the government.

However, my problem and it's more in the nature of
Bruton problem. How was I notified?

THE COURT: There is a Bruton only if that document
says something about your client.

MS. RODRIGUEZ: He's a co-defendant.

MR. MIRANDA CORRADA: Well, Your Honor, I'm not so

certain and again because I'm not certain I am certainly going to
read these cases but since the Court was going to read them --

THE COURT: I am not prepared to give a decision on the
matter.

MR. MIRANDA CORRADA: I just wanted to bring it to the
Court's attention so that you're aware of my concern. I am
certainly not in a position right now to put my hand in the fire
for that proposition. However, I do have a concern.

MR. ANGLADA: If I may address the Court.

THE COURT: Brevity is a virtue.

MR. ANGLADA: Well, I may not address the Court then.

THE COURT: No, brevity is a virtue.

MR. ANGLADA: It's a matter that concerns -- the
government of the United States when they do indict a group of

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1 defendants and there has been underlying state proceedings where,
2 A, no probable cause has been found; B, where defendants have
3 been acquitted; C, where they have entered pleas for lesser
4 offenses and/or misdemeanor, then they move in limine as they did
5 in 95-029 before Judge Fuste. In the bottom of '95, then they
6 move for a motion for limine, and they castrate defendants from
7 bringing to court the acquittal, the dismissal. No probable
8 causes, lesser offenses.

9 But when they do pick and choose and they bring a
10 particular indictment where it happens by virtue of coincidence
11 that no acquittal, no dismissal at the time of Rule six and Rule
12 23 in local proceedings, plea for conviction for lesser offense
13 then there is no motion for limine. So, what I'm saying is that
14 the government is bringing this matter depending on the
15 convenient for the government.

16 THE COURT: That's their job.

17 MR. ANGILADA: Well, it's not a matter of their job when
18 they do have --

19 THE COURT: You're doing yours.

20 MR. ANGILADA: When they do have -- when they are
21 blessed by the two sovereigns. Under this Circuit Court there
22 are other circuits that do believe differently and then they do
23 have a state agent and they have a state agency and then they
24 pick and choose, Your Honor. And that is the problem.

25 The problem is that upon that forum there may be a

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1 motion in limine. If there was an acquittal or a dismissal or a
2 no probable cause found at the time of the alleged -- at the time
3 of the preliminary hearing, at the time of the preliminary
4 hearing de Novo or at the time of trial. But in this particular
5 indictment, this particular government presentation decided not
6 to do in limine and then if we have to live with all the plea
7 agreements of all the indictments why don't we do a trial by
8 computer. We sit down at a terminal and we run a trial on a
9 computer.

10 And then this is all a show, Your Honor, because
11 what kind of fairness is going to preside on defendant A or
12 defendant B, or defendant E, that five years ago for convenience,
13 Your Honor, because in a state court everyone knows that an
14 Article Eight of the weapons law is ten years of prison. And
15 everyone, everyone knows that if you enter a plea for an Article
16 Seven misdemeanor you take six months of probation. And the same
17 goes for drugs and the same goes for murder you go down to
18 homicide, involuntary manslaughter and it's not fair.

19 Six years from now I enter a plea today on Article
20 Seven weapons law or an Article 404 controlled substance or
21 involuntary manslaughter instead of murder in the first degree.
22 And six years from now I am going to be stuck with my own
23 admission, six years from now in another jurisdiction before
24 another sovereign.

25 THE COURT: That's why these cases are going to orient

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me. They're going to orient me to see if I can do it or not.

MS. RODRIGUEZ: Your Honor, the last statement by counsel is what is correct, not his opening statement. The last statement by counsel.

What we are seeking to introduce is the admissions of these defendants before a different forum with respect to overt acts that we proved here they committed. We are not attempting to introduce a previous conviction. There is a big difference. What the United States has sought to exclude in prior trials has been verdicts of other juries because that would be to take away the role of the jury here which is to accept the credibility of these witnesses and determine the culpability of the defendants and that is not what we're seeking to do here.

What we're seeking to do here, is something very different, it is to admit the various statements made by these defendants in another forum in another place, anywhere. It doesn't matter where the admission was made. The fact is that it was made by a defendant. And the rules provide that those admissions are admissible against them even if they were made five years ago, ten years ago, whenever they were made.

THE COURT: There is no jury here.

MS. APONTE CABRERA: I know, Your Honor.

THE COURT: There is no jury here.

MS. APONTE CABRERA: I would like for the record to say that the same process in this case was someone to oppose my

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client in 97-72 from bringing evidence of being acquitted in state court.

THE COURT: That's what she said.

MS. RODRIGUEZ: That's what I said.

MS. APONTE CABRERA: But Your Honor, the fact is that there is a case of Boykin versus Alabama, which is a Supreme Court case. That it is unacceptable to accept a plea unless there is a full understanding, where there is evidence of a full understanding of what the plea conduct and its consequence. And without having the transcript to know whether the judge informed any of the defendants that pled, that this plea would be used against them in federal court I submit that it is inadmissible and this Supreme Court said it.

THE COURT: Good. So let me hear that case.

MS. APONTE CABRERA: B-O-Y-K-I-N versus Alabama. 395

U.S.238, 89 Supreme Court 1709, and in Krulwich --

THE COURT: 89 Supreme Court.

MS. APONTE CABRERA: 1709. And Krulwich versus

United States.

THE COURT: Spell that please.

MS. APONTE CABRERA: K-R-U-I-E-W-I-C-H versus United States, 336 U. S. 440. The Supreme Court says, Your Honor, that it's naive to expect an instruction. And I'm quoting, this in the sense that since my client did not plea, if the Court were to give an instruction that the admissions were only to be used

1 against the parties that made the admission and not the
2 co-defendants, that type of curative instruction.

3 I'm submitting to the Court that the Supreme Court
4 said it was naive to expect that an instruction can cure the
5 effects of a confession or admission of nature intended by the
6 document submitted by the prosecution, of practicing lawyer not
7 to be on litigating pictures.

8 So, I submit to the Court that there is a spill
9 over of having a co-conspirator who is either a partner or an
10 employee, according to the government's version, and admits to
11 having done something, the implication as to the non contesting
12 party can not be cured and overcome by any instruction that the
13 Court can give.

14 MS. RODRIGUEZ: Your Honor, we would to refer the Court
15 to the order entered by Judge Casellas in case number 97-82, U.S.
16 versus Angel Ayala, et al, held before Judge Casellas last --
17 previously this year. Where Judge Casellas ruled that such
18 admissions were in fact admissible.

19 MR. ANGLADA: I will move for the same token the order
20 by Judge Fustle, criminal 95-029, trial number one in the autumn
21 of 1995, without suggesting that is the -- that is persuasive to
22 this Court.

23 There are two additional problems, Your Honor. I
24 have practiced in state court for ten years and I can proffer to
25 this Court under oath that I have never seen a state judge

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1 presiding over a change of plea in a state proceedings advising
2 any client on any criminal procedure, either murder, drugs,
3 weapons, domestic violence, whatever, about the subsequent
4 consequences of bringing those admissions before a federal court
5 subsequently.

6 And second, Your Honor, we don't have a trial
7 transcript at the time of change of plea where those defendants
8 may have either, A, explained why they are entering a plea; or B,
9 exculpating other defendants. Those two matters are to be
10 considered by the Court.

11 MS. RODRIGUEZ: Your Honor, we provided transcript to
12 the defendants -- if I may be allowed to finish -- we provided
13 transcript of Juan Soto Ramirez as to his change of plea. We
14 provided transcript to Carmelo Vega Pacheco of his change of
15 plea. We provided transcript to Ramon Fernandez Malave of his
16 change of plea, Your Honor.

17 So, Counsel Aponte is correct. We did not provide
18 the transcript to all eleven defendants. We understood that was
19 an admission by each defendant relevant to that particular
20 defendant. And we provided transcript to those counsel. But we
21 can photocopy the same and provide them for the rest of the
22 counsel. We don't understand that will bear upon the ruling of
23 the Court on that issue.

24 MS. RAMOS GRATEROLES: Your Honor, the problem is not
25 the fact that the Court stated before. I was aware of the

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1 convictions of my client. The surprise to us were the facts that
2 in the third amended designation of evidence the government never
3 told us, neither me or any of my co-counsel, that those
4 admissions were going to be entered, and certainly she provided
5 me the transcript of the change of plea, after the third week or
6 fourth week of trial. That's the surprise. That is the surprise
7 of the case.

8 MR. RIVERA ESTEVES: May I inquire?

9 THE COURT: Yes, Mr. Rivera.

10 MR. RIVERA ESTEVES: There were certain alleged overt
11 acts which had been taken under or pending a Petroziello
12 evaluation by this Court. That's correct. If the circle has not
13 gone full circle.

14 THE COURT: There is no -- there is a Petroziello
15 determination pursuant to the co-conspirator statement.

16 MR. RIVERA ESTEVES: Exactly.

17 THE COURT: Not necessarily as to the overt act. It
18 can be as to many other things. It can be as to the drugs. It
19 can be as to the overt acts, it can be as to any matter that
20 relates potentially under 801. 801(d) subsection e.

21 MR. RIVERA ESTEVES: Fine, Your Honor. This is where I
22 have a great concern in addition to what brother and sister
23 counsel here have expressed, but this is where I have great
24 concern as to my client in particular. My client -- there was
25 testimony here, hearsay testimony that involved a co-defendant

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1 having basically furnished a confession of my client. There is
2 no other evidence really linking my client to an alleged murder.

3 Now, if we're also going to have on top of this an
4 admission, basically, we state that so and so admitted, or so and
5 so was found guilty, the injury, Your Honor, that the act of
6 fairness in the eyes of the jury, the danger involved, the
7 inherent danger of the jury connecting a hearsay admission
8 regarding a confession, regarding someone, which I cannot put on
9 the stand because he's a co-defendant, vis-a-vis, Your Honor,
10 that admission is -- basically the jury can basically decide
11 right there and then guiltiness where it really doesn't belong.

12 And that's just like this Honorable Court to
13 really consider because there really is danger in there. There
14 is a confession, supposedly, which I will not have an opportunity
15 to confront to that confession. Now if on top of that we tell
16 the jury that the person who supposedly my client confesses to or
17 confesses my client has been found guilty or has confessed to a
18 crime.

19 THE COURT: But didn't that come as an admission rather
20 than confession?

21 MR. RIVERA ESTEVES: But the effect, Your Honor.

22 THE COURT: There are two different things.

23 MR. RIVERA ESTEVES: No. My client did not admit.

24 THE COURT: No. It does matter. It does matter
25 because a confession in the traditional sense could be before an

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1 officer, before a federal officer. Yet an admission could be
2 made to a co-conspirator.

3 MR. MIRANDA CORRADA: But I will not be able to cross
4 examine and sit that person there.

5 MS. RODRIGUEZ: That is correct. The argument of
6 Counsel Rivera and which counsel Miranda seems to be joining will
7 be that he will be unable to confront the declarant, that will be
8 the same case if it was a confession and it's admissible. The
9 rules anticipate that. The rules provide for that.

10 THE COURT: The Supreme Court decided a few years ago.

11 MS. RODRIGUEZ: According to that argument a confession
12 would never be allowed into evidence.

13 MR. RIVERA ESTEVES: Your Honor had I been timely
14 notified, had designation of evidence been afforded me, which
15 basically states what came out in this trial, I think I would
16 have had ample grounds to ask for a severance.

17 MR. MIRANDA CORRADA: Severance.

18 MR. RIVERA ESTEVES: Ample grounds of an act which to
19 date I still insist it does not form part of this conspiracy.

20 MR. MIRANDA CORRADA: And to answer Sister Counsel, a
21 confession that implicates my client by somebody else is not
22 generally admissible. And that is Bruton and that is why I
23 couched my original presentation to the Court in those terms.
24 I'm not saying that it's straight Bruton problem but there is
25 certain familiar issues present.

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1 MS. RODRIGUEZ: But Bruton also states, Your Honor,
2 that where the defendant does not inculpate a codefendant, there
3 is no grounds for severance. There are no grounds for severance.
4 That is also what Bruton states and that's the Supreme Court of
5 the United States.

6 MR. RIVERA ESTEVES: But what we have here, we have
7 here the actual prohibition of going through the kitchen door
8 because someone there is basically stating, oh, he told me that
9 he and he killed him, and that other he is my client. They're
10 coming in through the kitchen door what they can't get, you know,
11 through the front door.

12 THE COURT: But my concern over that is that you're
13 arguing against the Supreme Court because that matter has been
14 decided in U.S. versus Villalo. You're arguing against the
15 Supreme Court.

16 MS. APONTE CABRERA: Then the rule of criminal
17 procedures establishes that if there are documentation that are
18 to be submitted they have to be designated. And they did not
19 designate that; moreover, the rules of discovery have been
20 violated because selectively the government decided why I should
21 not have an exhibit discovery and some of the defendants received
22 it.

23 If they chose to go to trial together, unless with
24 specific ruling of the Court that a particular matter was not to
25 be discussed to all at the same time, why did the government keep

1 from me knowing that the other defendants who pled guilty
2 received some discovery that I did not receive. Why did they
3 preclude me and now they're trying to use that in a trial where
4 my client is charged with somebody else.

5 If they had known this they should have discovered
6 to all of us so that we could have addressed this matter
7 properly. And at this point if the Court or if the government is
8 insisting in bringing this forward or the Court would allow it I
9 would ask the Court for a side bar at that moment and I would
10 request a severance and state my position for the record. And
11 also, Your Honor, as to the last designation, and September 15
12 order of 1998 establishes that the government could not designate
13 as the trial went along after that date. And that is what
14 they're doing now. These documents are not designated. They
15 have not announced any expert that says the signature in that
16 public document accepting a plea is the signature of any of these
17 codefendants or there's been a handwriting sample. Because
18 somebody signed Jose Soto does that mean that Jose Soto Ramirez
19 the same one that is here is the one that signed the paper they
20 have not announced the expert to say it's the same person. So
21 they're going to bring a document with hearsay. So we can assume
22 that it was the same Jose Soto Ramirez who was there, to assume
23 that is the same person that signed the plea in this case.
24 THE COURT: But doesn't that come in under the
25 exception of a public document?

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1 MS. APONTE CABRERA: No, Your Honor, because in
2 criminal matters the public document exception does not apply and
3 it's specifically laid out in rules, Your Honor.

4 MS. RODRIGUEZ: No, it does not apply to police
5 officer, not to official court documents.

6 MS. APONTE CABRERA: No, Your Honor, to public
7 documents it does not apply in criminal matters.

8 MS. RODRIGUEZ: Your Honor, Rule 803 of the Federal
9 Rules of Evidence, subsection eight, public records and reports,
10 records, reports statement or data compilation in any form of
11 public documents or agencies setting forth, A, specific office A
12 or B, matters preserved pursuant to the duties performed by law
13 as to matters with a duty to report excluding, however, in
14 criminal cases matters occurred by the police officers and other
15 law enforcement personnel.

16 Your Honor, to the extent of my knowledge a Court
17 is not a law enforcement personnel.

18 MS. APONTE CABRERA: Your Honor, although the Court
19 might be from the judicial branch, at the moment that it is
20 taking a plea or giving a sentence it is a enforcing the law.

21 So therefore, one of the two duties of the
22 judicial branch is to enforce the law and that's enforcing the
23 observation by a judge put down in a document qualify as hearsay.

24 MS. RODRIGUEZ: Your Honor, I respectfully suggest that
25 we grant the Court an opportunity to read the cases that we have

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1 cited to the Court.
 2 THE COURT: That is what I will do.
 3 Very well. You're excused for the day. We will
 4 see you tomorrow.
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REPORTER'S CERTIFICATE

I, ARTHUR G. PINEDA, Official Court Reporter for the United States District Court for the District of Puerto Rico, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct computer aided transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

ARTHUR G. PINEDA
 Official Court Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ARMANDO GARCIA - GARCIA,

Petitioner

- VS -

UNITED STATES OF AMERICA

Respondent

PETITIONER'S EXHIBIT

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[IN RE: 28 U.S.C. §2255]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) CR. NO: 97-076 (DRD)
)
WILLIAM SOTO BENIQUEZ, et al)
)
Defendant.)
_____)

REBUTTAL

BE IT REMEMBERED that the above entitled action came on
for hearing before the HONORABLE DANIEL R. DOMINGUEZ, sitting at
Hato Rey, Puerto Rico, on the 23rd day of June, 1999.

All counsel and parties present as before.

ARTHUR G. PINEDA, OCR
Federal Building, Rm. G-40
150 Chardon Ave., Hato Rey, P.R. 00918
(787) 766-4319

COPY

1 that you want to stay calm, remember that he who goes bad he goes
2 rotten is because he wants to.

3 And we have here our mascot. Can't forget about
4 him. Not less, not more not less, El Gordo Porcel. He gets into
5 my room all the time and I'm laughing all day just from his
6 jokes. Is Victor Negrón Maldonado getting pressured not to take
7 the stand? You judge for yourself. Is it a coincidence that
8 Victor Negrón Maldonado tells you that Armando García García is a
9 drug trafficker, that García García sold drugs at Barriada
10 Bitumul. Is it a coincident that on September 4th, 1991 Armando
11 García García pleads guilty to possession of heroin? Is that a
12 coincidence?

13 Is it a coincidence that, he, Victor Negrón
14 Maldonado tells you that Ramon Fernandez Malave, also known as
15 Porcel, the one just mentioned in Juan Corozon's letter,
16 committed a murder. And Ramon Fernandez Malave in fact pled
17 guilty to the murder of Tito Dones Sanchez. Is that a
18 coincidence?

19 Is it a coincidence that Victor Negrón Maldonado
20 tells you Ramon Fernandez Malave is a drug trafficker. Ramon
21 Fernandez Malave sold drugs for Juan Cintron. Ramon Fernandez
22 Malave packaged narcotics for me in December of 1992. And that
23 on April 19th, 1993, Ramon Fernandez Malave is found with 151
24 capsules of crack and 54 bags of cocaine at Callejon Eight in
25 Barriada Bitumul, and a loaded .38 revolver. Is that a

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ARMANDO GARCIA - GARCIA,

Petitioner

- VS -

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Respondent

PETITIONER'S EXHIBIT

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[IN RE: 28 U.S.C. §2255]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

vs. CR. NO: 97-076 (DRD)

ARMANDO GARCIA GARCIA,

Defendant.

SENTENCING

BE IT REMEMBERED that the above entitled action came on for hearing before the HONORABLE DANIEL R. DOMINGUEZ, sitting at Hato Rey, Puerto Rico, on the 28th day of February, 2000.

APPEARANCE:

For the Plaintiff: AUSA Jacobed Rodriguez Coss

For the Defendant: Jose Romo Matienzo, Esq.

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THE CLERK: Criminal Number 97-76, United States of America versus Miguel Vega Cosme, for sentencing.

On behalf of the government Assistant U.S.

Attorney Jacobed Rodriguez Coss, on behalf of defendant Attorney

Jose Romo Matienzo. Defendant is present in court.

THE COURT: Are we ready?

MR. ROMO MATIENZO: Yes, Your Honor. Before we say we

are totally ready, we want to point out that this morning we met -- we had met before at MDC, but this morning we met with our client in the cell block and he pointed out to us that in the PSI, in page eight, that we haven't raised it before because we were unaware of it. It says that they are applying section -- Title 18, Section 1119, and that brings him to a level 43.

And as our discussion this morning this was not put into action until after the alleged death of Garcia was committed. So, as to being on level 43, we object to that part because it would be an extra factor being applied to the case of Armando Garcia.

And since there is no discussion in the PSI as to all the other factors that would bring up the minimum guideline of statutory minimum of level 32, ten years, we don't have before us that, I am sure that the prosecutor would come up with arguments that should go up, but we should have the opportunity.

THE COURT: To what?

MR. ROMO MATIENZO: To argue what she's going to bring

1 up because as far as we know he's on level 32, minimal.

2 THE COURT: Thirty-two? He's at 38 to start off.

3 MR. ROMO MATIENZO: Why?

4 THE COURT: He's 38, because the amount of drugs here
5 is definitely 38.

6 MR. ROMO MATIENZO: It doesn't show here in the PSI.

7 That's our point Your Honor. We should have an opportunity to
8 argue because this is going to be with him the rest of his
9 convicted life, Your Honor.

10 THE COURT: Okay. Let's see. Let's see. United
11 States, what is the position of the United States relating to the
12 drug in this case, as to him?

13 MS. RODRIGUEZ COSS: Your Honor, Armando Garcia Garcia
14 was already distributing narcotics in 1996, when this conspiracy
15 began with Barriada Bitumal and continued to go on through the
16 end of the conspiracy as charged in the indictment.

17 In other words, after the famous "palo", the
18 stealing of the two hundred kilos of cocaine and they were
19 brought back to be distributed in Barriada Bitumal this
20 individual was still an active member of the conspiracy. Those
21 narcotics were packaged at his house for distribution at the
22 point that Juan Antonio Rodriguez Lopez controlled.

23 So, clearly incorporating by reference all the
24 arguments we have set forth before this Court in related
25 sentences for co-defendants who stood trial together with

1 Mr. Armando Garcia Garcia we are at level 38.

2 Now, I very respectfully would submit that defense
3 counsel cannot possibly come to a sentencing on a drug case and
4 not be prepared to discuss drug amounts. I can see if we were
5 looking for an enhancement that was unforeseeable or we failed to
6 notify, but this is simple mathematics. First thing you do is
7 you calculate the amount of drugs.

8 THE COURT: All right. The way the Court sees it, in
9 this particular case, it's very easy to reach 38, with the record
10 that this Court has. On the "palo" alone, which was the stolen
11 drugs in Fajardo, on the "palo" alone we have an excess of 150
12 kilos.

13 Now, that doesn't count all the other drugs that
14 was distributed throughout all those points, which testimony of
15 the cooperator clearly indicated was known to all. And there is
16 another way to reaching 38, and that is more than 1.5 kilos of
17 crack cocaine. And that is also very easy to reach in this case
18 because of the amount.

19 Now, in Rivera Maldonado, United States versus
20 Rivera Maldonado, the Court of Appeals clearly set forth what the
21 standards are in a drug conspiracy case as to the amount of
22 drugs. And those are the drugs that he personally handled or
23 anticipated handling, and under the relevant conduct rubric for
24 drugs involved in additional acts of the conspiracy that were
25 reasonably foreseeable by him and were committed in furtherance

1 of the conspiracy.

2 So, in other words, it's not just what he himself
3 handled, but what is foreseeable could have been handled in the
4 drug conspiracy. And that's old law. That comes from the cases
5 of United States versus Sepulveda, and if I open the Sepulveda
6 I'm sure that's very old law.

Now, in this case most probably he's going to get
an enhancement as to weapons also.

MR. ROMO MARTENZO: I understand.

THE COURT: And the weapons enhancement was in the
books way before 1993.

MR. ROMO MARTENZO: I understand that.

THE COURT: Now, the enhancement which this Court has
not applied it, it applied in one case, but when confronted with
the issue of enactment the judge changed the sentence, was an
amendment that may have occurred after defendant's offense, but
before sentencing which would increase the sentence.

And for that the Court cites about fifteen cases.

U.S. versus Secop, 15 federal 3rd 1380, from the Seventh Circuit.

U.S. versus Belle, 991 federal 2nd 1445, Eighth Circuit 1993.

U.S. versus Koop 952 federal 2nd, 521, from the Third. U.S.

versus Nagi 947 federal 2nd, 211 from the Sixth Circuit. U.S.

versus -- 1991 -- U.S. versus Sweetin 933 federal 2nd, 765 from

the Ninth Circuit, 1991. And there is even a case from the First

Circuit Court which mentions it in passing which is U.S. versus

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1 Harold Pandura 927 federal 2nd 1640, also page 1442, First Circuit
2 Court 1990.

3 All standing for the proposition that an amendment
4 which occurs after the conduct of the defendant, the criminal
5 conduct but before sentencing may have exonerating problems. So,
6 assuming that the Court would not apply the automatic 43 mandated
7 life imprisonment, your client is still looking at a 38 plus two
8 years 40. Now, let me hear what the position is for sentencing at
9 this time.

10 MR. ROMO MARTENZO: Well, we would, first of all we
11 would object that on page eight, item or paragraph 17 stays the
12 way it is.

13 THE COURT: That would have to be all amended. They
14 will all have to be amended. The Court would have to order the
15 amendment to a level 38, weapon amendment -- a weapon inclusion,
16 but an exclusion as to automatic 43. Now, considering that do
17 you still insist on a postponement?

18 MR. ROMO MARTENZO: No, I understand that -- well, the
19 evidence at trial, the way the Court sees it, not that we are
20 accepting that was truthful, but that was the evidence that came
21 before the jury and the jury found him guilty. Be it that the
22 case, our objection was as to finding him under level 43, when
23 the law did not apply to him because it wasn't --

24 THE COURT: The Court has determined in other sentences
25 not to apply a level 43. And the only one that the Court reached

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1 a level 43, there were two which the Court reached a level 43,
2 and the Court later changed that.

3 MR. ROMO MATELENZO: Being that the case we don't -- if
4 the PSI is corrected to that effect we don't have --

5 THE COURT: What is the position of the United States?

6 MS. RODRIGUEZ COSS: Well, we are presuming in amending
the PSI, as far as its base offense level, to 38, a two level upward
adjustment applies for the use of weapons.

8 THE COURT: That's 40.

9 MS. RODRIGUEZ COSS: We understand that was not
10 reflected on the original.

11 THE COURT: That's not reflected on the PSI.

12 MS. RODRIGUEZ COSS: Because having established a level
13 43, there is really no need to go beyond that. But if the base
14 offense level changes, we understand that now it would apply.

15 THE COURT: Yes, the weapons would apply. And there
16 was evidence as to weapons because the persons that were killed
17 in the double murder --

18 MS. RODRIGUEZ COSS: Were killed --

19 THE COURT: -- wherein the defendant was, according to
20 the evidence, a participant.

21 MS. RODRIGUEZ COSS: Right. He's accused of
22 participating in the murder of Oscar Nazario who was killed on
23 October of 1993, Your Honor.

24 THE COURT: He was the police agent, right?
25

8
1 MS. RODRIGUEZ COSS: No, sir, this is -- that was a
2 member of an opposing gang.

3 THE COURT: This is Oscarito?

4 MS. RODRIGUEZ COSS: Oscarito.

5 THE COURT: This was the gentleman who was killed in
6 the shopping area, food shopping area?

7 MR. ROMO MATELENZO: No.

8 MS. RODRIGUEZ COSS: Near Floral Park.

9 THE COURT: Yes. This was the gentleman that was --
10 yes. All right. Fine.

11 MS. RODRIGUEZ COSS: He was the 16 year old, Your
12 Honor, if the Court recalls who had his name tattooed on his
13 person.

14 THE COURT: Yes.

15 MS. RODRIGUEZ COSS: We specifically would like to hear
16 defense counsels position as to the two level enhancement as to
17 weapons.

18 THE COURT: What is the position of the defendant,
19 first as to the amount of drugs; and second, the amount of drugs
20 that was set forth in the testimony by the two conspirators that
21 testified. Are you going to dispute that the drug reached a 38
22 under the applicable jurisprudence?

23 MR. ROMO MATELENZO: Well, Your Honor, as to the drugs
24 and as to the weapons that evidence was before the Court in the
25 trial, not that we are accepting that was truthful that he had

9
1 the drugs or that he had the -- that it came before the Court,
2 yes, it did.

3 THE COURT: It was there.

4 MR. ROMO MATTENZO: Yes, it was.

5 THE COURT: There was evidence for the Court to
6 conclude one of two scenarios as to the weapon. Either that your
7 client used the weapon or that your client -- or that a
8 co-conspirator used a weapon in this case, and your client was
9 associated with that weapon, right?

10 MR. ROMO MATTENZO: That was evidence that came before
11 in trial, yes, Your Honor.

12 THE COURT: In other words, that when a weapon was
13 possessed by a co-defendant the enhancement may be applied if the
14 possession was reasonably foreseeable to the defendant in
15 connection with the joint undertaken criminal activity. You
16 understand that the enhancement in this case for weapons could be
17 two ways, either because he used it himself or because a
18 co-defendant used it in connection with the joint undertaking of
19 the criminal activity?

20 MR. ROMO MATTENZO: Yes, I understand. We had
21 exception to the presentence report. I believe some of it has
22 been corrected, but as to the --

23 THE COURT: This Court orders that the presentence
24 report be amended in everything that reflects that a 43 is
25 mandated pursuant to section 2D1.1, 2D1.1D1, requiring a cross

10
1 reference to Title 18 U.S.C. 1111. In other words, the mandated
2 life sentence is to be stricken from the presentence report.
3 That's the position of the Court.

4 MR. ROMO MATTENZO: Thank you, Your Honor.

5 THE COURT: All right. Now, the other matter is that
6 the presentence report does not mention weapons, but it does not
7 mention weapons because they had arrived at a higher level. Now,
8 it's going to be weapons. It's still going to be a two point
9 enhancement. Because either there was sufficient evidence that
10 he used the weapon or that a co-defendant was in possession of a
11 weapon and used the weapon, and that was foreseeable by the
12 defendant. What is your position as to that?

13 MR. ROMO MATTENZO: We understand the Court's position
14 and that's the way it is.

15 THE COURT: Okay. There was evidence to that effect?

16 MR. ROMO MATTENZO: Yes, there was evidence, but we --

17 THE COURT: I'm not stating that you should accept that
18 the evidence is true or that the evidence occurred. I'm only
19 asking was their evidence on the record to maintain that
20 conclusion.

21 MR. ROMO MATTENZO: Yes, there was. There was.

22 THE COURT: And was there evidence on the record to
23 maintain the conclusion that it was 38? That the level of drugs
24 attained mandates a 38?

25 MR. ROMO MATTENZO: There was evidence, Your Honor.

11

THE COURT: Okay. Very well. Okay. Knowing that then, what is your position as to sentencing?

MR. ROMO MATTIENZO: Sentence can be -- we have other things we want to bring up to the Court, but as to those two the Court pointed out we don't have objection as to that.

THE COURT: That's favorable to you. Up to now it's favorable.

MR. ROMO MATTIENZO: But we have a motion that defendant wants to file himself. It's the motion to dismiss the indictment or to preserve the issue, it's --

THE COURT: Mr. Gil?

MR. ROMO MATTIENZO: Mr. Gil's appointment.

THE COURT: Very well.

MR. ROMO MATTIENZO: And the other thing is that we found exception to the pretrial sentence report where it says that Armando Garcia Garcia, was characterized as a triggerman. And there was evidence that he was in a car when Oscarito was killed. The car that supposedly took the two persons who actually killed Canito. But he was never actually -- maybe in the police reports before the trial, but in the actual trial there was no evidence as to pointing Mr. Armando Garcia as the triggerman.

THE COURT: In other words, he didn't actually shoot?

MR. ROMO MATTIENZO: He didn't actually shoot. That's the evidence that he was with the persons who shot Oscarito and

12

that he was driving the car. That was the evidence.

THE COURT: Well, let me hear the position of the United States as to that.

MS. RODRIGUEZ COSS: We disagree. I think that the evidence was clear, that four individuals planned this death at Barriada Bitumul and all four of them got inside that car with the intent to go looking for this person and kill him. I think that makes him a triggerman.

That's not the only instance in which Armando Garcia Garcia conducted himself in that fashion. He's also one of the individuals who went to Fajardo looking for Plito in order to kill him. And that was another instance where this person formed part of a plan to kill another human being.

In addition to that, he possessed weapons during the course of conspiracy, Your Honor, as one of the individuals who stood guard at the drug points. And there is evidence in the record to that effect. So, we would object to the PSI being changed to reflect that Armando Garcia Garcia was not a triggerman.

THE COURT: All right. The request that the PSI be amended not to show that he was a triggerman is denied. The Court does recall that, in fact, the testimony of the cooperator was precisely that these four individuals went to look for this person, and whether or not he fired the shots or not, fine, that's clear. We don't know if he was the one who fired the

13
1 shots. But the evidence to the Court tends to indicate that he
2 was in the car when the shots were fired and he was looking for
3 them -- and they were looking for him. So, I really cannot order
4 the amendment of that.

5 MR. ROMO MATELENZO: That was our position, Your Honor.
6 We accept the ruling of the Court.

7 THE COURT: All right. Is there any objection as to
8 the criminal history of the defendant?

9 MR. ROMO MATELENZO: The criminal history we requested
10 that it be amended and I believe it was amended to level four,
11 yes.

12 THE COURT: Why is it level four.

13 PROBATION OFFICER: Miriam Figueroa.

14 THE COURT: Thank you.

15 PROBATION OFFICER: Your Honor, on page nine, in 1990
16 he was sentenced to Article 95, and he got two points for that.

17 On page 10, it reflects that he was also sentenced for violation
18 of Article 404, controlled substance at the local level. And he
19 was --

20 THE COURT: That was in Article 95, right?

21 PROBATION OFFICER: That is correct, Your Honor.

22 THE COURT: And those facts are away from the
23 conspiracy in this case.

24 PROBATION OFFICER: That is correct, Your Honor.

25 THE COURT: All right. So that's five points.

14
1 PROBATION OFFICER: That's five points. Four in
2 paragraph 28, it states that since the defendant committed the
3 instant offense while under a criminal judgment sentence two other
4 points were added. And since the defendant committed the instant
5 offense less than two years after release from imprisonment on
6 the sentence of May 10, 1991 another point was added. So that
7 comes up to, Your Honor, eight points. And eight points with a
8 history category of four.

9 THE COURT: Eight points with a criminal history
10 category of four.

11 PROBATION OFFICER: Yes, Your Honor.

12 THE COURT: What is the range at five and four?

13 PROBATION OFFICER: Level 40. The range comes up to
14 40 to life.

15 THE COURT: He's still facing life. What happened to
16 the state murder charges? United States?

17 MS. RODRIGUEZ COSS: I'm not aware. I'm not aware of
18 that status, Your Honor.

19 MR. ROMO MATELENZO: I believe some other person was
20 charged and convicted for the crime of Oscarito.

21 I don't remember Pito Salsa's real name, but Pito
22 Salsa --

23 MS. RODRIGUEZ COSS: Luis Torrens Alicea.

24 MR. ROMO MATELENZO: Luis Torrens Alicea and some other
25 person were charged and I believe the other person were

1 convicted.

15

2 THE COURT: May I have the position of the United
3 States.

4 MS. RODRIGUEZ COSS: As to, Your Honor, what the
5 appropriate sentence should be in this case?

6 THE COURT: Yes.

8 MS. RODRIGUEZ COSS: I think the Court is aware that we
9 understand that the sentence in this case should be life
10 imprisonment for a number of reasons. This defendant was a
11 member of a very violent drug conspiracy, Your Honor. In
12 addition to the fact that the presentence investigation report
13 places him at a level 40, with a criminal history category of
14 four, exposing him to life imprisonment sentence.

15 We understand that if the guidelines enhancement,
16 which was approved just a month after sixteen year old Oscar
17 Nazario was brutally killed by this defendant and four other
18 individuals, this defendant would be looking at a mandatory life
19 imprisonment sentence. So, we understand the Sentencing
20 Commission that approved the United States Sentencing Guidelines
21 would support a life sentence in this case, because it is the
22 policy of the government, Your Honor, that an individual who
23 murdered a person within a drug conspiracy such as the one
24 charged in this case be sentenced to life imprisonment.

25 But in this case, Your Honor, there are other
aggravators, not just the murder of Oscar Nazario Rivera. You

1 have another 12 murders which were undertaken by this
2 organization which were proven at trial. Murders which span from
3 1990 through the end of 1993, ending, of course, with the murder
4 of Oscar Nazario.

16

5 ~~Remando Garcia was a member of what~~
6 ~~conspiracy throughout his entire life.~~ In other
7 words, he as a member of the conspiracy was aware of the violent
8 nature because he himself engaged in that violence. He possessed
9 weapons in furtherance of the conspiracy. He saw others possess
10 weapons. He knew of the other murders that had been undertaken
11 in order to further the goals of the conspiracy charged in this
12 indictment.

13 Notwithstanding that fact, he chose to continue to
14 participate in those acts, all the way up to October 1993 when he
15 himself participated in the murder of another human being. And
16 Your Honor, I think it's worth noting that, that other human
17 being who was killed in October of 1993 was a sixteen year old
18 boy. I think probably out of the 12 murders that were undertaken
19 by this conspiracy that one deserves mention, because of the age
20 of the victim.

21 In addition to that, Your Honor, a defendant
22 stands before this Court who's been through the justice system
23 before. ~~Part of the reason that he has a criminal history~~
24 ~~category four is the fact that he had prior state convictions,~~
25 ~~and notwithstanding the fact that those convictions had been --~~

17
1 ~~had sentence imposed on him, continued to participate in the~~
2 ~~conspiracy, charged in this case.~~

3 Now, so the Court has to also take into
4 consideration the fact that apparently, Your Honor, this
5 defendant does not know the meaning of the word rehabilitation.
6 He was given more than one opportunity before the trial in this
7 case to correct his behavior. His incredibly anti social
8 behavior. He was given that opportunity by the state system.
9 And he chose to continue his life of crime. And based upon that
10 will fact, based upon the violent nature of this organization,
11 based upon the violent acts that this defendant himself
12 participated in, the United States most definitely is requesting
13 that this Court sentence the defendant to life imprisonment.

14 THE COURT: I'm going to let you have the last word
15 before I hear allocution from the defendant.

16 MR. ROMO MATIENZO: Yes. Your Honor, all the points, I
17 mean, all the points brought out by the government just right now
18 are considered in the sentencing guideline. They are already
19 that he has prior, they're already included he went up to
20 criminal history four, it's considered. What she just said right
21 now consider this, consider that, that is considered. That's why
22 he goes up to category four because it's considered. What she is
23 asking, the government is asking to consider it even further and
24 the law that wasn't applied, that didn't exist when Oscarito, she
25 said, forget about expo facto, also consider it. Even consider

18
1 it even further.

2 THE COURT: But let us assume for one second, as the
3 Court should and the Court does, because ~~he~~ ~~have not~~ ~~hesitated in~~
4 ~~presenting~~ ~~defendants~~. One of them ended up any way with a
5 life because he had a leadership role that the Court had to put
6 in, plus he had a weapon that brought him up to 43, anyway.
7 Right.

8 But assuming, as the Court has to assume, at this
9 moment, that the mandatory 43 does not reach, is not reachable
10 here. The mandatory 43, because the mandatory three was enacted
11 in November of 1993, and these murders occurred sometime
12 thereafter -- sometime before. Excuse me. Sometime before.

13 So, even assuming that, wouldn't the Court
14 consider as an aggravating and tending to push it to the upper
15 end, the fact that there were 12 murders in this conspiracy.

16 That's no where here, nor the fact that himself participated in a
17 murder, and the fact that at the end of the conspiracy he showed
18 his proclivity towards violence in that he went out looking still
19 for another guy to murder. Wouldn't I use those factors to give
20 him the higher end rather than the lower end, I ask you.

21 MR. ROMO MATIENZO: Your Honor, if he actually had
22 killed anybody, you would have to consider going up and not going
23 down. But he didn't actually kill anybody. Even believing all
24 the testimony against him.

25 THE COURT: Assuming that I believe and giving him the

19
1 doubt that he was not one of the persons who shot. He was still
2 in the car that left Bitumui with a purpose to kill somebody,
3 wherever he was, he happened to be in Floral Park, get him and
4 kill him. And wasn't he in the car that went to Fajardo, also,
5 in the two cars that went to Fajardo, also to attempt to find
6 this other gentleman to kill him. They were lucky. They didn't
kill him. But anyway, wasn't he there?

8 MR. ROMO MATIENZO: There was evidence as to that.

9 THE COURT: There was evidence. I don't know if he was
10 there or not. But he was there pursuant to the evidence. Okay.
11 Wouldn't that justify a higher end rather than a lower end?

12 MR. ROMO MATIENZO: Yes, Your Honor, it would justify a
13 lower end if he was a leader that organized that, that he was the
14 one in charge of this organization. But he wasn't at that level,
15 Your Honor. The punishment should be higher to the ones higher;
16 sometimes it doesn't go that way because the persons who most
17 kill were the witnesses of the government and sometimes it
18 doesn't work that way. But, I believe if the person was the
leader and actually killed that person should get life. But the
20 person who --

21 THE COURT: So, the intellectual does not get anything,
22 just the triggerman?

23 MR. ROMO MATIENZO: The intellectual also should get --

24 THE COURT: For example, if my role is merely driving
25 the car but I know for sure that they're going to kill him, my

20
1 job is to drive the car I shouldn't get it, just the people who
2 actually does the firing? Is that the law?

3 MR. ROMO MATIENZO: The evidence could have been that
4 he was driving the car, got off the car and shot somebody. If
5 that really made him to get life imprisonment, Your Honor, that
6 would put him in a position that I couldn't even open my mouth
7 here.

8 THE COURT: You couldn't if the death would have been
9 after 1993. If the event after occurred after 1993. But you did
10 open your mouth and you did point out to the Court that there is
11 no mandatory 43 in this case, which is correct. At least I
12 interpret it that way, although the U.S. does not.

13 I want you to know that their position is that
14 since the conspiracy went beyond 1993, November 1993, that I
15 could really use that enhancement. But I'm giving him the
16 benefit of the most liberal interpretation to him. However, the
17 fact is, that there are a lot of aggravating circumstances that
18 this case has which are not taken care of by the mere application
19 of the offense levels rules nor by mere application of the
20 criminal history rules.

21 MR. ROMO MATIENZO: Yes, Your Honor. But a level at
22 360 months, well, meaning 30 years, he will come out an old man,
23 Your Honor. That's more than punishment. Whatever -- the other
24 way he's going to come out dead.

25 THE COURT: I'm going to hear allocution now from the

1 defendant.

2 MR. ROMO MATELENZO: He might say some words, but this
3 is the filed motion.

4 THE COURT: Well, the record -- as to the filed motion
5 of Guillermo Gil. May I see it. U.S. Attorney Guillermo Gil.
6 Okay.

7 His position is that he does not want to use his
8 right of allocution?

9 THE DEFENDANT: At least I would tell you that before
10 you impose sentence I'd like you to consider that I have five
11 children that depend on me, my family. That is all.

12 THE COURT: Okay. The Court accepts the filing in a
13 pro se fashion, although the Court's ruling in this case has been
14 that there being an attorney, motions have to be filed through an
15 attorney but I understand that this matter is to preserve the
16 issue. And the Court accepts the filing without your signature.
17 It is order to be filed and docketed. The Court will recess
18 briefly.

(SHORT RECESS)

19 THE COURT: On June -- is there any reason why the
20 Court should not at this time proceed to sentencing?

21 MR. ROMO MATELENZO: No reason that we know. Our only
22 request is that our client Armando Garcia Garcia be sentenced at
23 the lower end of the guideline.
24
25

THE COURT: Thank you. On June 25, 1999, the defendant

1 Armando Garcia Garcia was found guilty by a jury trial to count
2 two of the superseding indictment in Criminal Case Number 97-076,
3 which charges violation of Title 21, U.S.C. Section 846.

4 Based on United States Guideline 2D1.1, and the
5 amount of drugs involved in the instant offense a base level of
6 38 was determined. The level is determined by the Court, either
7 by 1.5 kilograms of crack cocaine, which was distributed by the
8 conspiracy and was reasonably foreseen by the defendant or by the
9 150 kilograms of cocaine -- or by 150 kilograms of cocaine easily
10 reachable by the bust of drugs stolen in Fajardo, brought to the
11 Bitumul conspiracy. That was known throughout the trial as the
12 "palo" in Fajardo. The criminal history category is not disputed
13 in this case, but it is criminal history category of four.

14 As the defendant has not accepted responsibility
15 for his involvement in the offense conduct there are no further
16 applicable guidelines. Based on a total offense level of 40 and
17 a criminal history category of four, the guideline imprisonment
18 range in this particular offense is from 360 months to life, with
19 a fine range of twenty-five thousand to four million, plus a
20 supervised release term of at least five years.

21 Given defendant's participation in the offense
22 conduct, wherein he showed proclivity towards violence, shown by
23 the fact that he was one of the persons who mounted a car to kill
24 Cesar Oscar Nazario, and also at the end of the conspiracy he
25 also mounted a car to kill another person, all related to the

23
1 drugs, and that in the instant offense the conspiracy involved 12
2 murders which were foreseeable to the defendant pursuant to
3 United States Guideline 1B1.3 of relevant conduct a sentence at
4 the upper end of the guideline range is merited.

5 Therefore, it is the judgment of the Court that
6 the defendant is hereby committed to the custody of the Bureau of
Prisons to be imprisoned for life.

8 Having considered the defendant's financial
9 condition a fine is not imposed.

10 If the defendant is ever released from custody he
11 shall be placed on supervised release for a term of five years
12 under the following terms and conditions.

13 One: The defendant shall not commit another
14 federal, state or local crime and shall observe the standard
15 conditions of supervised release recommended by the United States
16 Sentencing Commission and adopted by this Court.

17 Two: The defendant shall not unlawfully possess
18 controlled substances, firearms, destructive devices or other
dangerous weapons.

20 Three: The defendant shall refrain from any
21 unlawful use of a controlled substance and submit to one drug
22 test within fifteen days of release on probation or supervised
23 release for the use of controlled substance and thereafter, as
24 required by the U.S. Probation officer.

25 A special monetary assessment -- is a special

24
1 monetary assessment of fifty dollars imposed? It shouldn't be
2 imposed. He did not plead guilty.

3 PROBATION OFFICER: Excuse me, Your Honor?

4 THE COURT: This is not a plea case. Why is the fifty
5 dollar monetary assessment imposed? It's placed no matter what
6 happens.

7 PROBATION OFFICER: That's correct.

8 THE COURT: A special monetary assessment in the amount
9 of fifty dollars is also imposed.

10 Sir, you have a right to appeal since you were
11 found guilty after a plea of not guilty. The notice of appeal
12 shall be filed in the district within -- in this district court
13 within ten days from today, when the judgment of the Court will
14 be entered.

15 You have a right to apply for leave to appeal in
16 forma pauperis if you are unable to pay the cost of an appeal.

17 If you are represented by court appointed counsel he will
18 continue to represent you through appeal, if any, unless a
19 substitute counsel is later appointed. You will be given credit
20 for your sentence for any days spent in federal custody in
21 connection with the offenses for which the sentence has been
22 imposed.

23 We have to advise for the record that the
24 transcript of the sentencing proceedings is to be forwarded to
25 the United States Sentencing Commission.

1 Anything further?

2 MR. ROMO MATIENZO: No, Your Honor, we request that
3 copy of the transcript be authorized to defendant.

4 THE COURT: It will be and it is. The Court orders
5 that a copy of the transcript be provided under the CJA rules to
6 defendant's counsel Mr. Romo Matienzo.

Anything further from the United States?

8 MR. ROMO MATIENZO: Nothing further.

9 MS. RODRIGUEZ COSS: Nothing further.

10 THE COURT: Anything further from the defendant?

11 You're excused.

12 MR. ROMO MATIENZO: Thank you, Your Honor.

25

1 THE CLERK: Criminal case 97-76, United States of
2 America versus Armando Garcia Garcia.

3 THE COURT: Okay. Criminal number 97-76.

(SHORT PAUSE IN PROCEEDINGS)

4 THE COURT: Take him away. George, don't take him to
5 MDC until we find out where his lawyer is. Has he left?

Will you check to see that he doesn't leave.

7 THE MARSHAL: Very well.

8 THE COURT: Let's proceed with his sentencing.

9 All right, Mr. Rivera. I'm going to take a

10 recess.

(SHORT RECESS)

11 THE COURT: Okay.

12 The Court authorized the late filing of the
13 Guillermo Gil matter, but the Court did not dispose of that
14 motion.

15 The Court disposes of that motion in the exact
16 same way as the Court disposed of that motion when it was made in
17 the case of United States of America versus Lorenzo Munoz Franco.
18 95-0386, wherein basically the Court adopted the opinions of
19 Judge Fuste in United States versus Curry Perez, 47 Federal
20 Supplement 2nd 164. United States versus Solomayor Vazquez at
21 97-091, and also the United States versus Santana and the
22 decision of Judge Iaffitte at United States versus Rodriguez Sosa
23 97-257, and Judge Perez Gimenez at United States versus Ruiz Rio.

26

27-118.

So, the motion is denied for that reason. Also recently Judge Perez on 17 February, entered an order in United States versus Roberto Ruiz Rio stating that even though he found that there was no infirmity in the appointment of Mr. Gil either from its inception or by the virtue of the time that has elapsed that, notwithstanding even if there were some infirmity that the infirmity did not reach the level which required that the indictments be dismissed.

I have copies of both of these cases here and I am providing a copy of them and ordering the secretary to incorporate them by reference into the file in this disposing of the matter. Okay.

Now, please give him a copy of the decision and place a copy of the decision on the record. So, I need at least two copies and leave one copy here because this is a matter that is going to keep on occurring for the next few weeks. Okay.

Since I disposed now of the motion I will technically proceed with sentencing and sentencing would be exactly the same as have already elapsed. Anything further?

MR. ROMO MATTENZO: Nothing further, just that this part of the transcript be --

THE COURT: Incorporated in to the transcript.

Thank you very much.

MR. ROMO MATTENZO: Thank you.

THE COURT: You're excused.

MR. ROMO MATTENZO: Thank you.

REPORTER'S CERTIFICATE

29

I, ARTHUR G. PINEDA, Official Court Reporter for the United States District Court for the District of Puerto Rico, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct computer aided transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

ARTHUR G. PINEDA
Official Court Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ARMANDO GARCIA - GARCIA,

Petitioner

- VS -

UNITED STATES OF AMERICA

Respondent

PETITIONER'S EXHIBIT

H

[IN RE: 28 U.S.C. §2255]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Appeal No. 01-1619
UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
WILLIAM SOTO-BENIQUEZ,
Defendant-Appellant

Appeal No. 01-1674
UNITED STATES OF AMERICA,
Plaintiff-Appellee
v.
JUAN SOTO-RAMIREZ,
Defendant-Appellant

Appeal No. 00-1547
UNITED STATES OF AMERICA,
Plaintiff-Appellee
v.
EDUARDO ALICEA-TORRES,
Defendant-Appellant

Appeal No. 01-1620
UNITED STATES OF AMERICA,
Plaintiff-Appellee
v.
RAMON FERNANDEZ-MALAVE,
Defendant-Appellant

Appeal No. 00-1464
UNITED STATES OF AMERICA,
Plaintiff-Appellee
v.
CARMELO VEGA-PACHECO,
Defendant-Appellant

Appeal No. 00-1488
UNITED STATES OF AMERICA,
Plaintiff-Appellee
v.
ARMANDO GARCIA-GARCIA,
Defendant-Appellant

Appeal No. 00-1470
UNITED STATES OF AMERICA,
Plaintiff-Appellee
v.
JOSE LUIS DE LEON-MAYSONET,
Defendant-Appellant

Appeal No. 00-1362
UNITED STATES OF AMERICA,
Plaintiff-Appellee
v.
RENE GONZALEZ-AYALA,
Defendant-Appellant

Appeal No. 00-1543
UNITED STATES OF AMERICA,
Plaintiff-Appellee
v.
JUAN ENRIQUE CINTRON-CARABALLO,
Defendant-Appellant

Appeal No. 00-1361
UNITED STATES OF AMERICA,
Plaintiff-Appellee
v.
MIGUEL VEGA-COLON,
Defendant-Appellant

Appeal No. 00-1456
UNITED STATES OF AMERICA,
Plaintiff-Appellee
v.
MIGUEL VEGA-COSME,
Defendant-Appellant

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

BRIEF FOR APPELLEE

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over time, there was nevertheless one overarching conspiracy.” See, e.g., United States v. Shea, 211 F.3d 658, 665 (1st Cir. 2000).

Moreover, the record reflects the active participation of the three appellants in the conspiracy. After stealing the 200 kilos of cocaine in Fajardo with Rodriguez Lopez, Gonzalez-Ayala received profits from the sale of said cocaine in Bitumul. TT, 2/1/99, p. 89. He also worked at the table decking heroin and cocaine at Garcia-Garcia’s house. TT, 2/1/99, p. 89; 4/15/99, p. 70.

As late as 1993, when De Leon-Maysonet was already 18, he would prepare decks of narcotics and store them in his residence. He also stored weapons in his residence for the ‘safe keeping’ of the conspiracy. TT, 2/1/99, p. 87; 3/25/99, p. 48.

Garcia-Garcia, on the other hand was an active participant in the conspiracy from beginning to end. The record reflects that he sold drugs at Cuba Street in 1990 and 1991. TT, 1/19/99, p.29; 1/21/99, pp.100, 130. He also participated in the Los Lirios shootings. TT, 1/20/99, p.17. Throughout 1992 and 1993, he “worked the table,” that is, packaged drugs. TT, 1/26/99, p.13; 3/25/99, p.13.

B. The District Court Properly Admitted Evidence Regarding Murders Carried Out in Furtherance of the Conspiracy.

Appellants further argue that the district court committed reversible error in admitting evidence of various murders that were unrelated to the charged conspiracy.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ARMANDO GARCIA - GARCIA,

Petitioner

- VS -

UNITED STATES OF AMERICA

Respondent

PETITIONER'S EXHIBIT

I

[IN RE: 28 U.S.C. §2255]

United States Court of Appeals For the First Circuit

Vol. I of II

No. 01-1619

UNITED STATES OF AMERICA,

Appellee,

v.

WILLIAM SOTO-BENÍQUEZ,

Defendant, Appellant.

No. 01-1674

UNITED STATES OF AMERICA,

Appellee,

v.

JUAN SOTO-RAMÍREZ,

Defendant, Appellant.

No. 00-1547

UNITED STATES OF AMERICA,

Appellee,

v.

EDUARDO ALICEA-TORRES,

Defendant, Appellant.

No. 00-1470

UNITED STATES OF AMERICA,

Appellee,

v.

JOSE LUIS DE LEÓN MAYSONET,

Defendant, Appellant.

No. 00-1362

UNITED STATES OF AMERICA,

Appellee,

v.

RENE GONZALEZ-AYALA,

Defendant, Appellant.

No. 00-1543

UNITED STATES OF AMERICA,

Appellee,

v.

JUAN ENRIQUE CINTRÓN-CARABALLO,

Defendant, Appellant.

No. 00-1361

UNITED STATES OF AMERICA,

Appellee,

v.

MIGUEL VEGA-COLÓN,

Defendant, Appellant.

No. 00-1456

UNITED STATES OF AMERICA,

Appellee,

v.

MIGUEL VEGA-COSME,

Defendant, Appellant.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
[Hon. Daniel R. Domínguez, U.S. District Judge]

Before

Selya, Circuit Judge,
Coffin, Senior Circuit Judge,
and Lynch, Circuit Judge.

Marlene Apontes-Cabrera for appellant Soto-Beníquez.
Miriam Ramos-Grateroles for appellant Soto-Ramírez.
Raymond Rivera Esteves for appellant Alicea-Torres.
Luz M. Rios-Rosario for appellant Fernández-Malavé.
Javier Morales-Ramos for appellant Vega-Pacheco.
Rachel Brill for appellant García-García.
Roberto Roldan-Burgos for appellant de León Maysonet.
Victor Miranda-Corrada, for appellant Gonzalez-Ayala.
Rafael Anclada-Lopez for appellant Cintrón-Caraballo.
Marcia G. Shein for appellants Vega-Cosme and Vega-Colón.

Jacabed Rodriguez-Coss and Michelle Morales, Assistant United States Attorneys, with whom H.S. Garcia, United States Attorney, and Sonia I. Torres-Pabon, Assistant United States Attorney, were on brief, for appellee.

November 20, 2003

Soto-Ramírez and Soto-Beníquez were the leaders of the operation. Soto-Ramírez operated or supplied almost all of the drug points. His house at Callejón Dos was used by various defendants to prepare crack and heroin for distribution at the six drug points and to store weapons to defend and acquire territory for the drug points. When defendant Miguel Vega-Cosme established his drug point on Laguna Street with his son, defendant Miguel Vega-Colón, he first requested permission from Soto-Ramírez.

Soto-Beníquez served as the triggerman and principal supplier. He ultimately supplied most of the narcotics sold at the drug points and owned many of the weapons used to kill rival gang members. Cesário-Soto described him as "one with ranks" in the drug world.

The remaining defendants were involved in running one or more of the six drug points. Eduardo Alicea-Torres sold drugs at the Cuba Street and Callejón Dos drug points from 1990 until at least 1991, and later began his own drug point. Ramon Fernández-Malavé packaged crack and cocaine for Soto-Ramírez and cooperating government witness Negrón-Maldonado in 1992. Carmelo Vega-Pacheco packaged drugs for Soto-Ramírez and Negrón-Maldonado through 1992, and sold narcotics at the Cuba Street drug points in 1990 and 1991. Armando García-García sold narcotics at the Cuba Street drug points from 1990 to 1991, packaged drugs in 1992, and sold drugs at Callejón Nueve in 1993. From 1990 to 1992, Jose de León Maysonet

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ARMANDO GARCIA - GARCIA,

Petitioner

- VS -

UNITED STATES OF AMERICA

Respondent

PETITIONER'S EXHIBIT

5

[IN RE: 28 U.S.C. §2255]

Nos. 00-1488, 00-1470, & 00-13
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

v.

ARMANDO GARCIA GARCIA,
Defendant, Appellant.

UNITED STATES OF AMERICA,
Appellee,

v.

JOSE LUIS DE LEON MAYSONET,
Defendant.

UNITED STATES OF AMERICA,
Appellee,

v.

RENE GONZALEZ AYALA,
Defendant.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO
(Hon. DANIEL R. DOMINGUEZ, United States District Judge)

CONSOLIDATED BRIEF FOR THE APPELLANTS

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Nos. 00-1488, 00-1470, & 00-1362

-87-

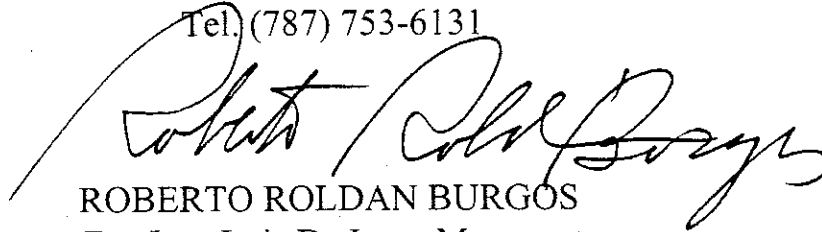
RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 9th day of April, 2003.



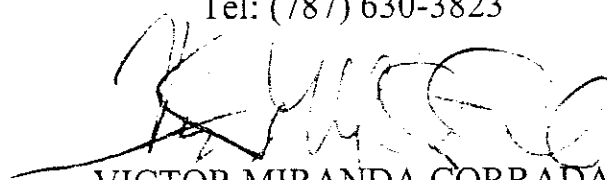
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